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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/924,561	08/08/2001	Jean Jianqun Zhao	8209M	3643

27752            7590            03/12/2003

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EXAMINER

COLE, ELIZABETH M

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 03/12/2003

X

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/924,561	ZHAO ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Elizabeth M Cole	1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) Claim(s) 1-28 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-18 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a)  The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

<ol style="list-style-type: none"> <li>1)<input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</li> <li>2)<input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</li> <li>3)<input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>2,3</u>.</li> </ol>	<ol style="list-style-type: none"> <li>4)<input type="checkbox"/> Interview Summary (PTO-413) Paper No(s) _____.</li> <li>5)<input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</li> <li>6)<input type="checkbox"/> Other: _____.</li> </ol>
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1. Claim 2 is objected to because of the following informalities: "inorganic" is misspelled.

Appropriate correction is required.

2. Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims merely setting forth physical characteristics desired in an article, and not setting forth specific compositions which would meet such characteristics, are invalid as vague, indefinite, and functional since they cover any conceivable combination of ingredients either presently existing or which might be discovered in the future and which would impart the desired characteristics. Thus, the instant limitations are too broad and indefinite since it purports to cover everything which will perform the desired functions regardless of its composition, and, in effect, recites compounds by what it is desired that they do rather than what they are; the expressions also are too broad since it appears to read upon materials that could not possibly be used to accomplish purposes intended. *Ex parte Slob (PO BdApp) 157 USPQ 172*. Thus, the instant claims do not recite specific polymeric compositions which would meet the claimed characteristics such as change in basis weight, tensile strength and tensile elongation, but merely recite the desired characteristics.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-7, 9-10 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Timmermann et al, U.S. Patent No. 5,644,020.

Timmermann et al discloses a polyesteramide which is biodegradable. See abstract. The polyesteramide made comprise proportions of ester of between 35 and 80 wt%, see col. 3, lines 57-60. The polyesteramide may have a melting point of greater than 75 degrees C, see col. 4, line 2 and the examples show melting points of about 120 to 153 degrees C. The polyesteramide may be formed into laminates, see col. 4, line 65. The polyesteramide may comprise organic or inorganic fillers in an amount of 0-50% by weight and may further include UV stabilizers, lubricants, etc. See col. 4, lines 22-32. Timmermann et al does not disclose the claimed properties of an increase in basis weight of at least about 10% and a decease in tensile elongation of at least about 30% after being immersed in an active anaerobic sludge medium for 28 days and of being resistant to mold growth. However, since Timmermann et al discloses the same material as claimed, presumably it would inherently possess the claimed properties.

6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Timmermann et al as applied to claims 1-7, 9-10 above, and further in view of Warzelhan et al, U.S. Patent

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No. 6,353,084. Timmermann et al teaches incorporating inorganic fillers, but does not specifically list those claimed. Warzelhan et al teaches fillers including fillers such as calcium carbonate, and titanium dioxide into biodegradable polyesteramides. See col. 13, lines 1-14. It would have been obvious to have employed the fillers disclosed by Warzelhan in the laminate of Timmermann et al. One of ordinary skill in the art would have been motivated to employ the particular filler disclosed by Warzelhan et al because they are disclose as being suitable for use as fillers in biodegradable polyesteramides.

7. Claims 11-14, 17 are rejected under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over WO 96/31561, (equivalent to U.S. Patent No. 6,096,809 to Lorcks et al). Lorcks et al discloses a polymer mixture comprising a biodegradable polymer such as an aliphatic polyester, (col. 2, lines 10-12), including polyhydroxyalkanoates, (see col. 3, lines 30-45) and thermoplastic starch, which corresponds to the water-responsive polymer. The mixture may comprise 10-90% by weight of the thermoplastic starch. See col. 4, lines 7-12. The material may be formed into a variety of articles including diaper backsheets. See col. 11, lines 52-67. Lorcks et al does not disclose that the mixture has the claimed properties, however, since Lorcks et al discloses the same materials, presumably they would inherently possess the claimed properties.

8. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lorcks et al in view of Keyes et al, U.S. Patent No. 4,830,187.

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Lorcks et al does not disclose forming the material into a portion of a tampon. Keyes et al teaches at col. 1, lines 10-23 that the same materials which are suitable for use as degradable diaper materials can also be employed to form tampons. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the material disclosed by Lorcks et al into a tampon since the Lorcks et al material is disclosed as being degradable and suitable for use in diapers, and because Keyes teaches that such materials can be used in both diapers and tampons.

9. Claims 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lorcks as applied to claims 1-14, 17 above, and further in view of Warzelhan et al, U.S. Patent No. 6,353,084.

Lorcks does not disclose the particular fillers claimed. Warzelhan et al teaches fillers including fillers such as calcium carbonate, and titanium dioxide into biodegradable polymers. See col. 13, lines 1-14. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed the fillers disclosed by Warzelhan et al in the mixture of Lorcks. One of ordinary skill in the art would have been motivated to employ the particular filler disclosed by Warzelhan et al because they are disclose as being suitable for use as fillers in biodegradable polymers.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (703) 308-0037. The examiner may be reached between 6:30 AM and 5:00 PM Monday through Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (703) 308-2414.

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Inquiries of a general nature may be directed to the Group Receptionist whose telephone number is (703) 308-0661.

The fax number for official faxes is (703) 872-9310. The fax number for official after final faxes is (703) 872-9311. The fax number for unofficial faxes is (703) 305-5436.



Elizabeth M. Cole  
Primary Examiner  
Art Unit 1771

e.m.c

March 5, 2003